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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91178593
Party	Defendant Kolos, Edward
Correspondence Address	EDWARD KOLOS 6151 SHADOW TREE LANE LAKE WORTH, FL 33463-8239 UNITED STATES
Submission	Opposition/Response to Motion
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Signature	/s/Miguel Armenteros
Date	12/03/2007
Attachments	Memo.Opp.Motion to Compel.pdf (19 pages)(483668 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CKX, INC.,

Petitioner,

v.

EDWARD KOLOS,

Respondent.

Opposition No. 91178593

Cancellation No. 92047863

**RESPONDENT'S MEMORANDUM OF LAW IN OPPOSITION TO PETITIONER'S
MOTION TO COMPEL AND IN SUPPORT OF HIS MOTION TO ENLARGE THE TIME
TO RESPOND TO PETITIONER'S FIRST SET OF INTERROGATORIES AND FIRST
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Respondent, Edward Kolos ("Mr. Kolos"), files this memorandum of law, pursuant to Trademark Rule 2.127(a) and TBMP §403.04, in opposition to Petitioner, CKX, Inc.'s ("CKX"), motion to compel and moves the Board to enlarge the time for Mr. Kolos to respond to Petitioner's First Set of Interrogatories and First Request for Production of Documents and states:

I. BACKGROUND

These proceedings were commenced on or about June 20, 2007 by Petitioner for cancellation of Respondent's H2Ocean registered trademark and in opposition to Respondent's pending applications to register Vet Aid, First In First Aid, Lemon Ice and E.N.R.G. as trademarks. On or about September 10, 2007, CKX served its First Set of Interrogatories and First Requests for Production on Respondent. Mr. Kolos' responses to the outstanding discovery were initially due by October 15, 2007.

Through agreement of the parties, Mr. Kolos was allowed a fifteen (15) day

extension of time, up through October 31, 2007, to serve his responses to the outstanding discovery. See Declaration of Edward Kolos at ¶3 attached hereto as **Exhibit A**. However, just prior to the expiration of the October 31st deadline, Mr. Kolos was actively engaged and unusually burdened in preparing for a business trip that required him to travel out of the country and was unable to serve his responses to the outstanding discovery.¹ See Declaration of Edward Kolos at ¶4 attached hereto as **Exhibit A**. Mr. Kolos spent the duration of the fifteen day extension just prior to his departure preparing for speeches, presentations and product demonstrations all which involved a large amount of time. See Declaration of Edward Kolos at ¶5 attached hereto as **Exhibit A**. Mr. Kolos did, however, serve his responses to the outstanding discovery on November 19, 2007 promptly after returning from his business travel.² See Responses to Petitioner's First Set of Interrogatories and Requests for Production of Documents and UPS tracking detail attached hereto as collective **Exhibit B** and Declaration of Edward Kolos at ¶8 attached hereto as **Exhibit A**.

Petitioner's motion should be denied on the grounds that opposing counsel failed to satisfy the "meet and confer" requirements of the Trademark Rules of Practice and the Federal Rules of Civil Procedure. See Trademark Rule 2.120(e) and Fed.R.Civ.P. 37(2)(B). Petitioner's motion should also be denied as moot as Mr. Kolos' has since responded to

¹Mr. Kolos was scheduled to depart for Austria and Germany on November 1, 2007. See Declaration of Edward Kolos at ¶6 attached hereto as **Exhibit A**.

²Mr. Kolos returned from Austria and Germany on November 13, 2007 in the late evening.

the outstanding discovery requests.

Alternatively, the Board should enlarge the time for Mr. Kolos to respond to the Petitioner's outstanding discovery as he demonstrates excusable neglect for failing to timely serve his responses or request an enlargement of time to serve his discovery responses.

II. ARGUMENT

A. Petitioner's Motion to Compel should be denied as it failed to meet and confer in good faith with Respondent.

The Trademark Rules require a party to make a good faith effort to resolve any discovery issues prior to filing a motion to compel. See Trademark Rule 2.120(e). Under the Federal Rules of Civil Procedure, in order to satisfy the meet and confer requirements of Rule 37, a party seeking discovery must, in good faith, take affirmative steps and act to secure the requested discovery from the opposing party prior to filing a motion to compel discovery. See *Shuffle Master, Inc. v. Progressive Games, Inc.*, 170 F.R.D. 166, 171 (D. Nevada 1996)(conferment between the parties requires the moving party to have had or attempted to have had an actual meeting or conference). Moreover, a good faith effort mandates a genuine attempt to resolve the discovery dispute through non-judicial means. *Id.*

Prior to the filing of its motion, Petitioner sent *one* email inquiring as to the status of Mr. Kolos' discovery responses. See email dated November 5, 2007 and attached hereto as **Exhibit C**. Due to Respondent's business travel he did not receive Petitioner's counsel's email until his return to the United States. See Declaration of Edward Kolos at ¶7 attached hereto as **Exhibit A**. Petitioner's counsel made no further attempts to contact

Mr. Kolos or to obtain the requested discovery prior to the filing of this motion. *Id.* Petitioner also did not attempt to set a date or time to confer and discuss any discovery problems or issues with Mr. Kolos. *Id.* Had Petitioner's counsel placed a telephone call to Mr. Kolos' office he would have been informed of his business travel itinerary and could have expected to confer with Mr. Kolos just nine (9) days later. Based upon the foregoing, Petitioner fails to demonstrate a good faith effort to confer with Respondent and accordingly its motion to compel should be denied.

B. Petitioner's Motion to Compel should be denied as moot as Mr. Kolos has responded to Petitioner's discovery requests.

Within days of returning from his business trip to Austria and Germany, Mr. Kolos served his responses to Petitioner's First Set of Interrogatories and First Request for Production of Documents. See Declaration of Edward Kolos at ¶18 attached hereto as **Exhibit A**. Accordingly, Petitioner's Motion to Compel should be denied as moot. See *Marinero v. Tremont Produce, Inc.*, 2006 WL 2583225 (M.D. Ga 2006)(finding that compliance with outstanding discovery requests renders moot a pending motion to compel responses).

C. The Board should enlarge the time for Mr. Kolos to respond to the Petitioner's discovery requests as Mr. Kolos' failure to respond was the result of excusable neglect.

As stated above, Mr. Kolos was required to travel to Austria and Germany just a day after his discovery responses were due. Due to the preparation that was required for his business travel, Mr. Kolos was unable to secure an additional extension of time to timely respond to the outstanding discovery and requests that the Board retroactively enlarge the

time period for his responses. See Declaration of Edward Kolos at ¶¶4 and 5 attached hereto as **Exhibit A**.

Rule 6(b), Fed.R.Civ.P., permits a Court to enlarge the time for a party to act after the expiration of a set time period where the failure to act was the result of excusable neglect.³ Here, the Board should relax the standard for excusable neglect and extend the time period for Respondent to serve his discovery responses as Mr. Kolos had previously been appearing pro se in this matter. See *GJR Investments, Inc. v. County of Escambia, Florida*, 132 F.3d 1359 (11th Cir. 1998)(Courts do and should show a leniency to *pro se* litigants not enjoyed by those with the benefit of a legal education). Furthermore, Petitioner has not been prejudiced by receiving Mr. Kolos' responses after the first extended deadline.

Here, Mr. Kolos' necessary business travel required him to be away from his office and resulted in (1) his inability to seek a second extension to respond to the outstanding discovery and (2) to respond to the email dated November 5, 2007 sent by Petitioner's counsel. As such, the time period to Mr. Kolos to respond to Petitioner's discovery requests should be enlarged and the responses deemed timely filed as Mr. Kolos has demonstrated excusable neglect in failing to timely act.

III. CONCLUSION

Based upon the foregoing, Petitioner's Motion to Compel should be denied as Petitioner's counsel failed to make a good faith effort to meet and confer with Respondent

³TBMP §403.04 allows discovery response time frames to be extended upon motion of a party pursuant to Fed.R.Civ.P. 6(b).

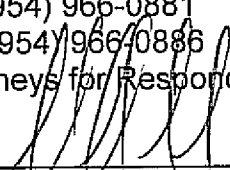
and as Mr. Kolos' responses to Petitioner's discovery requests have rendered the motion moot. The Board should also enlarge the time for Respondent to respond to the previously outstanding discovery requests and deem Mr. Kolos responses to be timely filed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served electronically through the Electronic System for Trademark Trials and Appeals on this 3rd day of December, 2007 on all counsel or parties of record on the attached service list.

RESPECTFULLY SUBMITTED:

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BY: 

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CKX, INC.,

Petitioner,

v.

EDWARD KOLOS,

Respondent.

Opposition No. 91178593
Cancellation No. 92047863

DECLARATION OF EDWARD KOLOS

1. I am over the age of eighteen and I make this Declaration based upon my personal knowledge.

2. I have reviewed the factual allegations of Respondent's Memorandum of Law in Opposition to Petitioner's Motion to Compel and Motion to Enlarge the Time to Respond to Petitioner's First Set of Interrogatories and First Request for Production of Documents.

3. Through agreement with Petitioner's counsel, I was permitted a fifteen (15) day enlargement of time to respond to Petitioner's outstanding discovery, up to and including October 31, 2007.

4. Prior to the expiration of the fifteen (15) day enlargement of time, I was required to travel to Austria and to Germany on a business matter and was unusually burdened in arranging my itinerary and preparing for my trip.

5. I spent much of the fifteen day extension just prior to my departure preparing for speeches, presentations and product demonstrations all which involved a large amount of time.

6. I departed for my business trip to Austria and Germany on November 1,

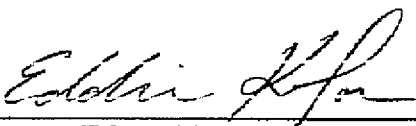
2007.

7. Due to the nature and locale of my business trip, I had limited access to my email account and did not receive Petitioner's counsel's email dated November 5, 2007 until after my return to the United States. No other attempts were made by Petitioner's counsel to contact me or to set a date or time to confer on the outstanding discovery issues.

8. Upon return from Austria and Germany, I did promptly serve my responses to Petitioner's outstanding discovery on November 19, 2007.

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

Dated: 12/3/07



Edward Kolos

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

CKX, Inc.	)	Opposition No. 91178593
Opposer/Petitioner	)	Cancellation No. 92047863
)	
	)	Serial Nos. 77/040,837;
v.	)	77/083,166;77/011,937;
	)	77/092,008
Edward Kolos)	
Applicant/Registrant	)	Registration Nos. 2,880,750;
	)	3,167,267

ANSWER TO FIRST SET OF INTERROGATORIES

Applicant, Edward Kolos("Applicant," or "Registrant"), for its Answer to the First Set of Interrogatories filed herein by Opposer, CKX("Opposer"), dated September 10, 2007, alleges as follows:

1. Applicant's mark VET AID is of the type that has implied distinctiveness and can be demonstrated through labeling, marketing, and advertising.
2. Applicant's mark FIRST IN FIRST AID is displayed on the label of the H2Ocean Nutrient Spray and H2Ocean Nutrient Foam products. Applicant has advertised the mark FIRST IN FIRST AID in brochures, posters, and magazine advertisements.
3. Applicant's mark VET AID will be used in products marketed to veterinarians, chain stores, pharmacies, etc.
4. Applicant objects to Interrogatory #4 on the grounds that it is harassing.
5. Applicant objects to Interrogatory #5 on the grounds that it is harassing.
6. Applicant objects to Interrogatory #6 to the extent it seeks confidential and/or trade secret information belonging to the Applicant and a protective order should be entered precluding the release of such information. Applicant's trade secret and confidential information include formulas, methods and processes which are not readily available to the general public, have independent economic value and are subject to reasonable efforts by the Applicant to maintain their secrecy. Absent such a protective order, Applicant would be harmed by the disclosure of its confidential information. Notwithstanding the foregoing objection, Applicant will

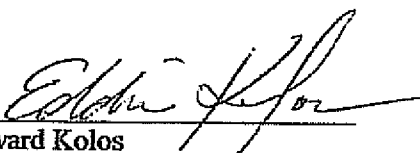
respond to Interrogatory #6 upon stipulation to the entry of a protective and/or confidentiality order pursuant to Fed.R.Civ.P. 26(c) and TBMP §412.02.

7. Applicant objects to Interrogatory #7 to the extent it seeks confidential and/or trade secret information belonging to the Applicant and a protective order should be entered precluding the release of such information. Applicant's trade secret and confidential information include formulas, methods and processes which are not readily available to the general public, have independent economic value and are subject to reasonable efforts by the Applicant to maintain their secrecy. Absent such a protective order, Applicant would be harmed by the disclosure of its confidential information. Notwithstanding the foregoing objection, Applicant will respond to Interrogatory #7 upon stipulation to the entry of a protective and/or confidentiality order pursuant to Fed.R.Civ.P. 26(c) and TBMP §412.02.
8. Applicant objects to Interrogatory #8 to the extent it seeks confidential and/or trade secret information belonging to the Applicant and a protective order should be entered precluding the release of such information. Applicant's trade secret and confidential information include formulas, methods and processes which are not readily available to the general public, have independent economic value and are subject to reasonable efforts by the Applicant to maintain their secrecy. Absent such a protective order, Applicant would be harmed by the disclosure of its confidential information. Notwithstanding the foregoing objection, Applicant will respond to Interrogatory #8 upon stipulation to the entry of a protective and/or confidentiality order pursuant to Fed.R.Civ.P. 26(c) and TBMP §412.02.
9. Applicant objects to Interrogatory #9 to the extent it seeks confidential and/or trade secret information belonging to the Applicant and a protective order should be entered precluding the release of such information. Applicant's trade secret and confidential information include formulas, methods and processes which are not readily available to the general public, have independent economic value and are subject to reasonable efforts by the Applicant to maintain their secrecy. Absent such a protective order, Applicant would be harmed by the disclosure of its confidential information. Notwithstanding the foregoing objection, Applicant will respond to Interrogatory #9 upon stipulation to the entry of a protective and/or confidentiality order pursuant to Fed.R.Civ.P. 26(c) and TBMP §412.02.
10. Applicant objects to Interrogatory #10 to the extent it seeks confidential and/or trade secret information belonging to the Applicant and a protective order should be entered precluding the release of such information. Applicant's trade secret and confidential information include formulas, methods and processes which are not readily available to the general public, have independent economic value and are subject to reasonable efforts by the Applicant to maintain their secrecy. Absent such a protective order, Applicant would be harmed by the disclosure of its confidential information. Notwithstanding the foregoing objection, Applicant will respond to Interrogatory #10 upon stipulation to the entry of a protective and/or confidentiality order pursuant to Fed.R.Civ.P. 26(c) and TBMP §412.02.

11. Applicant objects to Interrogatory #11 to the extent it seeks confidential and/or trade secret information belonging to the Applicant and a protective order should be entered precluding the release of such information. Applicant's trade secret and confidential information include formulas, methods and processes which are not readily available to the general public, have independent economic value and are subject to reasonable efforts by the Applicant to maintain their secrecy. Absent such a protective order, Applicant would be harmed by the disclosure of its confidential information. Notwithstanding the foregoing objection, Applicant will respond to Interrogatory #11 upon stipulation to the entry of a protective and/or confidentiality order pursuant to Fed.R.Civ.P. 26(c) and TBMP §412.02.
12. Applicant objects to Interrogatory #12 on the grounds that it is vague and ambiguous.
13. Applicant objects to Interrogatory #13 on the grounds that it is asking for proprietary and confidential information.
14. Applicant has sole discretion in the preparation and approval of advertisements or promotions of services marketed in connection with the marks H2OCEAN and H2OCEAN and Design.
15. Applicant objects to Interrogatory #15 on the grounds that it is vague and ambiguous.
16. Applicant objects to Interrogatory #16 on the grounds that it is overly broad in seeking information prior to any time period relating to the allegations contained in the petition and also as not being reasonably calculated to lead to the discovery of admissible evidence.
17. Applicant objects to Interrogatory #17 on the grounds that it is overly broad in seeking information prior to any time period relating to the allegations contained in the petition and also as not being reasonably calculated to lead to the discovery of admissible evidence.
18. Applicant objects to Interrogatory #18 on the grounds of being vague, overly broad and not being reasonably calculated to lead to the discovery of admissible evidence.
19. Applicant is the person most knowledgeable concerning the facts which support Applicant's denial of any allegation in the Combined Notice of Opposition and Petition to Cancel and Affirmative Defenses.
20. Registrant has not retained an expert as of the date of filing these responses. Respondent however, retains the right to designate an expert prior to trial.

Date: November 19, 2007

Respectfully Submitted,
Edward Kolos

By: 
Edward Kolos

6151 Shadow Tree Lane
Lake Worth, Florida 33463
(561) 649-6151

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

CKX, Inc.	)	Opposition No. 91178593
Opposer/Petitioner	)	Cancellation No. 92047863
)	
	)	Serial Nos. 77/040,837;
v.	)	77/083,166;77/011,937;
	)	77/092,008
Edward Kolos)	
Applicant/Registrant	)	Registration Nos. 2,880,750;
	)	3,167,267

ANSWER TO FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS

Applicant, Edward Kolos("Applicant," or "Registrant"), for its Answer to the First Requests for Production of Documents filed herein by Opposer, CKX("Opposer"), dated September 10, 2007, alleges as follows:

1. Documents responsive to this Request have been provided.
2. Documents responsive to this Request have been provided.
3. Documents responsive to this Request have been provided.
4. Documents responsive to this Request have been provided.
5. Documents responsive to this Request have been provided.
6. Applicant objects to Request #6 to the extent it seeks confidential and/or trade secret information through documents belonging to the Applicant and a protective order should be entered precluding the release of such information. Absent such a protective order, Applicant would be harmed by the disclosure of its confidential information. Notwithstanding the foregoing, Registrant will produce responsive documents to Request #6 upon entry of a protective and/or confidentiality order pursuant to Fed.R.Civ.P. 26(c) and TBMP §412.02.
7. Applicant objects to Request #7 to the extent it seeks confidential and/or trade secret information through documents belonging to the Applicant and a protective order should be entered precluding the release of such information. Applicant's trade secret and confidential information include formulas, methods and processes which are not readily available to the general public, have independent economic value and are subject to reasonable efforts by the Applicant to maintain their secrecy. Absent such a protective order, Applicant would be harmed by the

disclosure of its confidential information. Notwithstanding the foregoing, Registrant will produce responsive documents to Request #7 upon entry of a protective and/or confidentiality order pursuant to Fed.R.Civ.P. 26(c) and TBMP §412.02.

8. Applicant objects to Request #8 on the grounds it calls for discovery which is not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the foregoing objection, no responsive documents exist.
9. Documents responsive to this Request have been provided.
10. Documents responsive to this Request have been provided.
11. Applicant objects to Request #11 on the grounds it calls for discovery which is not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the foregoing objection, no responsive documents exist.
12. Documents responsive to this Request have been provided.
13. Documents responsive to this Request have been provided.
14. Applicant objects to Request #14 on the grounds it is overly broad and unduly burdensome. Applicant also objects to Request #14 regarding the marks VET AID and E.N.R.G. on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the foregoing objection, no responsive documents exist.
15. Applicant objects to Request #15 on the grounds it is overly broad and unduly burdensome.
16. Applicant objects to Request #16 to the extent it seeks confidential and/or trade secret information through documents belonging to the Applicant and a protective order should be entered precluding the release of such information. Applicant's trade secret and confidential information include formulas, methods and processes which are not readily available to the general public, have independent economic value and are subject to reasonable efforts by the Applicant to maintain their secrecy. Absent such a protective order, Applicant would be harmed by the disclosure of its confidential information. Notwithstanding the foregoing, Registrant will produce responsive documents to Request #16 upon entry of a protective and/or confidentiality order pursuant to Fed.R.Civ.P. 26(c) and TBMP §412.02.
17. Documents responsive to this Request have been provided.

18. Applicant objects to Request #18 to the extent it seeks confidential and/or trade secret information through documents belonging to the Applicant and a protective order should be entered precluding the release of such information. Applicant's trade secret and confidential information include formulas, methods and processes which are not readily available to the general public, have independent economic value and are subject to reasonable efforts by the Applicant to maintain their secrecy. Absent such a protective order, Applicant would be harmed by the disclosure of its confidential information. Notwithstanding the foregoing, Registrant will produce responsive documents to Request #18 upon entry of a protective and/or confidentiality order pursuant to Fed.R.Civ.P. 26(c) and TBMP §412.02.
19. Applicant objects to Request #19 on the grounds that it is vague and ambiguous.
20. Applicant objects to Request #20 on the grounds that it is vague and ambiguous.
21. Applicant is still researching and developing products in connection with the mark H2OCEAN and has not ceased use of the mark H2OCEAN in connection with any of the goods identified in the H2OCEAN trademark registration once they've been placed in commerce.
22. Applicant is still researching and developing products in connection with the mark H2OCEAN and Design and has not ceased use of the mark H2OCEAN and Design in connection with any of the goods identified in the H2OCEAN and Design trademark registration once they've been placed in commerce.
23. Applicant objects to Request #23 on the grounds that it is asking for proprietary and confidential information. Notwithstanding the foregoing, Registrant will produce responsive documents to Request #23 upon entry of a protective and/or confidentiality order pursuant to Fed.R.Civ.P. 26(c) and TBMP §412.02.
24. Applicant objects to Request #24 on the grounds that it is asking for proprietary and confidential information. Notwithstanding the foregoing, Registrant will produce responsive documents to Request #24 upon entry of a protective and/or confidentiality order pursuant to Fed.R.Civ.P. 26(c) and TBMP §412.02.
25. Applicant has formally completed and submitted applications to register its VET AID, FIRST IN FIRST AID, LEMON ICE, E.N.R.G., H2OCEAN and H2OCEAN and Design marks in the United States Patent and Trademark Office. All related documents are available through the USPTO.
26. Applicant objects to Request #26 as it is vague and ambiguous.

27. Applicant objects to Request #27 to the extent it seeks confidential and/or trade secret information through documents belonging to the Applicant and a protective order should be entered precluding the release of such information. Applicant's trade secret and confidential information include formulas, methods and processes which are not readily available to the general public, have independent economic value and are subject to reasonable efforts by the Applicant to maintain their secrecy. Absent such a protective order, Applicant would be harmed by the disclosure of its confidential information. Notwithstanding the foregoing, Registrant will produce responsive documents to Request #27 upon entry of a protective and/or confidentiality order pursuant to Fed.R.Civ.P. 26(c) and TBMP §412.02.

28. None

29. None

30. None

Date: November 19, 2007

Respectfully Submitted,
Edward Kolos

By: 
Edward Kolos

Tracking Detail

Your package has been delivered.

Tracking Number: 1Z Y19 0Y4 03 6270 407 5
Type: Package
Status: **Delivered**
Delivered On: 11/26/2007 11:17 A.M.
Signed By: HEATHER
Location: RECEPTION
Delivered To: CHICAGO, IL, US
Shipped/Billed On: 11/19/2007
Service: GROUND
Weight: 1.00 Lb

Package Progress			
Location	Date	Local Time	Description
CHICAGO, IL, US	11/26/2007	11:17 A.M.	DELIVERY
	11/26/2007	1:53 A.M.	OUT FOR DELIVERY
CHICAGO, IL, US	11/24/2007	8:15 A.M.	ARRIVAL SCAN
JACKSONVILLE, FL, US	11/21/2007	7:41 A.M.	DEPARTURE SCAN
JACKSONVILLE, FL, US	11/20/2007	3:49 A.M.	ARRIVAL SCAN
RIVIERA BEACH, FL, US	11/19/2007	10:58 P.M.	DEPARTURE SCAN
	11/19/2007	9:06 P.M.	ORIGIN SCAN
US	11/19/2007	5:57 P.M.	BILLING INFORMATION RECEIVED

Tracking results provided by UPS: 11/27/2007 2:00 P.M. ET

From: Douglas Masters [mailto:dmasters@loeb.com]

Sent: Monday, November 05, 2007 1:40 PM

To: Eddie Kolos

Subject: RE: G.O.A.T. ?

Eddie

First, did you send out your discovery responses on October 31? We have yet to receive them.

Second, I regret that you were insulted by our offer but we continue to believe that it is fair under the circumstances. You have expressed your opinion as to the worth of the products and GOAT mark, but given what we know, and the fact that any investment in the products will not be compromised by the settlement, we are still of the opinion that the application itself is of little value to you.

We are not going to bid against ourselves, but will entertain any good faith counter-offer. If you desire to continue to explore the possibility of settlement, I suggest that you make a realistic counter-offer.

Douglas N. Masters
Loeb & Loeb
321 N Clark Street
Suite 2300
Chicago, IL 60610
<mailto:dmasters@loeb.com>
(312) 464-3144
fax (312) 464-3111
Direct fax (312) 577-0828